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Attorneys for *Amicus Curiae*
SAN DIEGO ASSOCIATED BUILDERS AND CONTRACTORS,
GOLDEN GATE ASSOCIATED BUILDERS AND CONTRACTORS, SOUTHERN
CALIFORNIA ASSOCIATED BUILDERS AND CONTRACTORS, AND
LOS ANGELES - VENTURA ASSOCIATED BUILDERS AND CONTRACTORS

IN THE PROCEEDING BEFORE THE
OFFICE OF ADMINISTRATIVE LAW JUDGES
UNITED STATES DEPARTMENT OF LABOR

DEPARTMENT OF LABOR, OFFICE OF
APPRENTICESHIP TRAINING,
EMPLOYER AND LABOR SERVICES,

Prosecuting Party,

v.

CALIFORNIA DEPARTMENT OF
INDUSTRIAL RELATIONS,

Respondent

and

CALIFORNIA APPRENTICESHIP
COUNCIL,

Respondent.

) Case Nos. 2002-CCP-1,
) 2003-CCP-1

) AMICUS BRIEF IN SUPPORT OF OATELS'
) MOTION FOR SUMMARY JUDGMENT

) Administrative Law Judge:
) The Honorable John M. Vittone

I.
INTRODUCTION

The San Diego Associated Builders and Contractors, Golden Gate Associated Builders and Contractors, Southern California Associated Builders and Contractors, and Los Angeles - Ventura Associated Builders and Contractors file this brief as *amicus curiae* in support of the Office of Apprenticeship Training, Employer and Labor Services' ("OATELS") motion for summary judgment to have the California Department of Industrial Relations ("CDIR") and the California Apprenticeship Council ("CAC") derecognized for state apprenticeship purposes.

Derecognition is appropriate for the following reasons:

1. The CDIR and CAC violated the Fitzgerald Act by failing to obtain prior approval from OATELS for the revisions of California Labor Code section 3075 which instituted the so-called "needs test."
2. The needs test violates the Fitzgerald Act because it limits, rather than promotes, apprenticeship opportunities, and the purpose of the "needs" test has been to preserve union programs' monopolies in various areas of the State.
3. The conduct of California over the last several years has clearly indicated an agenda and purpose through the CDIR/CAC to favor prospective union programs over non-union programs. This is in addition to the two items listed below.

II.
BACKGROUND FACTS

Within California, ABC is represented by four separate chapters who sponsor registered apprenticeship programs. These chapters are the San Diego Associated Builders and Contractors, Golden Gate Associated Builders and Contractors, Southern California Associated Builders and Contractors, and Los Angeles - Ventura Associated Builders and Contractors (the "California ABC Chapters"). Approximately 80 percent of all construction workers are employed by merit shop companies in California.

In total, the California ABC Chapters and their Programs represent literally hundreds of contractors and over one thousand apprentices. One of ABC's primary functions is to implement and oversee nonunion apprenticeship training programs. Each of the California ABC Chapters sponsors a nonunion apprenticeship training program (the "ABC Programs"). The Programs are each registered and approved by the State of California.

Robert Balgenorth, President of the California State Building and Construction Trades Council ("SBCTC"), has filed a declaration in this proceeding. It provides in part:

"(4). The *vast majority of the apprentices* registered in *state-approved* apprenticeship programs in California are union members represented by the SBCTC and its affiliates. These apprentices are enrolled in programs jointly sponsored by building trades unions and union signatory contractors.

(5). There are approximately 62,500 apprentices registered in state-approved apprenticeship programs in the building and construction trades in California. Of those 62,500 apprentices, approximately 57,000 are registered in joint apprenticeship programs set up pursuant to collective bargaining agreements between building trades unions and union contractors. *Apprentices represented by building trades unions thus make up about 90 percent of the individuals who would be affected by the derecognition of the California Department of Industrial*

Relations ("DIR") by the Office of Apprenticeship Training, Employer and Labor Services ("OATELS")." (Italics added). (See Exhibit 1).

Mr. Balgenorth has been Chairman of the California Apprenticeship Council which has, for years, been made up of primarily union affiliated representatives. The above-referenced declaration of Mr. Balgenorth helps substantiate and explain the discrimination against non-union apprenticeship programs and proposed programs by the CDIR. The union controlled CAC has absolutely no economic incentive to allow competitive non-union apprenticeship programs to be become registered. According to Mr. Balgenorth's own sworn statement, the SBCTC has a virtual monopoly relative to apprenticeship programs in California. Those holding the monopoly control the governmental entity, the CAC, which enables the SBCTC to thwart approvals of non-union programs through unreasonable delays in approving competitive, non-union programs.

In October 1999, California's Assembly Bill ("AB") 921 was signed into law.

Among other things, AB 921 amended section 3075 of the state labor code to read as follows:

(b) For purposes of this section, the apprentice training needs in the building and construction trades shall be deemed to justify the **approval of a new apprenticeship program only if any of the following conditions are met:**

(1) There is **no existing apprenticeship program** approved under this chapter serving the same craft or trade and geographic area.

(2) Existing apprenticeship programs approved under this chapter that serve the same craft or trade and geographic area do not have the capacity, or neglect or refuse, to dispatch sufficient apprentices to qualified employers at a public works site who are willing to abide by the applicable apprenticeship standards.

(3) Existing apprenticeship programs approved under this chapter that serve the same trade and geographic area have been identified by the California Apprenticeship Council as deficient in meeting their obligations under this chapter.

Cal. Lab. Code § 3075(b).

California Labor Code section 3075(b) has been dubbed "the needs test." It is undisputed that prior to implementing the needs test, neither CDIR nor CAC requested OATELS' approval. In fact, they were warned repeatedly by OATELS of the problems with the needs test but these warnings were ignored.

Since the enactment of the needs test, the Programs have substantially been unable to receive approval from the CDIR or CAC for any new or expanded apprenticeship programs. During this five year period, only four new or expanded unilateral programs (as opposed to union based programs) were approved by California.

Based on the obvious disparity of treatment between union based programs and non-union programs, the Programs filed a complaint with the Department of Labor. The ensuing investigation led to this proceeding. As a further result, OATELS began concurrently registering local apprenticeship programs in California as of August 2003. Since that time, OATELS has promptly approved 17 new or expanded unilateral construction programs. This also demonstrates how California's delays in giving approvals have been unnecessary.

III.
THE NEEDS TEST VIOLATES THE FITZGERALD ACT BECAUSE IT LIMITS, RATHER
THAN PROMOTES, APPRENTICESHIP OPPORTUNITIES

The needs test is discriminatory because it limits the opportunities of apprentices, specifically, apprentices of non-union unilateral programs. The Fitzgerald Act does not provide for or allow that type of discrimination. Moreover, the needs test sends a clear message to non-union programs that they have a long, uphill battle obtaining approval which discourages even going to the trouble to apply and persevere. The message is also that there are two classes of programs: Those that are "in" the club and those that have the heavy burden of justifying why they should be let in the club. Existing club members under the statute have preference under the needs test.

The Fitzgerald Act specifically provides for equal treatment of union and nonunion programs. Associated Builders and Contractors, Inc. v. Reich, 963 F. Supp. 35, 38 (D.D.C. 1997); 29 C.F.R. § 29.3(i); Legislative History, Request for Judicial Notice ("RJN") Ex. A at 20, 26, 56-57, 95.

In Southern Cal. Chapter of Associated Builders and Contractors, Inc. v. California Apprenticeship Council 4 Cal.4th 422 (1992), nonunion contractors sought state approval of an apprenticeship program that would be operated in the same geographical areas as union affiliated programs. Id. at 427. The CAC refused, citing to a state regulation (the earlier "needs test") prohibiting programs that would adversely affect the prevailing conditions in the area. Id. The contractors challenged the decision on the grounds that this regulation, different from and in addition to the Fitzgerald Act, was preempted by ERISA. Id. at 427-28.

The California Supreme Court agreed. The apprenticeship programs were employee welfare benefit plans. Id. at 436-40. The Court concluded that state laws governing approval of apprenticeship programs have a "connection with" those programs. Id. at 441. Moreover, the state law expressly refers to the programs, bringing it within the federal law's preemptive reach. Id. The law was not saved from preemption by the savings clause. "Neither the fact that federal law envisions additional state regulation nor the fact that the state regulation is consistent with the purpose of the federal law resolves the issue of preemption. Under ERISA's savings clause as interpreted by the Supreme Court, the pertinent question remains whether the preemption of the state law would **modify, impair or hinder** the federal law" (i.e., the Fitzgerald Act). Id. at 451 (emphasis added). Preemption of this additional state requirement for approval of apprenticeship programs would not affect the purpose or the operation of the Fitzgerald Act or its regulations. Id. at 452. To the extent a state law sets forth a requirement for approval of apprenticeship programs that is **completely independent of those set forth by federal laws and regulations**, the law does not fall within the scope of ERISA's general savings clause. Id. at 453. (See also Associated General Contractors v. Smith, 74 3d 1166 (9th Cir. 1996) and Electrical Joint Apprenticeship Committee v. MacDonald, 949 F.2d 270 (9th Cir. 1996). **i.e. The Fitzgerald Act does not authorize a needs test.**

IV.
CDIR'S AND CAC'S FAILURE TO OBTAIN OATELS' PRIOR APPROVAL FOR THE
NEEDS TEST MERITS DERECOGNITION

Section 50 of the Fitzgerald Act authorizes the Secretary of Labor to formulate and promote the furtherance of labor standards necessary to "safeguard the welfare of apprentices" and "to extend the application of such standards by encouraging the inclusion

thereof in contracts of apprenticeship." 29 U.S.C. § 50. Pursuant to this express authority, the Secretary of Labor has promulgated regulations regarding the registration of apprenticeship programs.

The regulations provide detailed requirements which apprenticeship programs must meet in order to be approved. See 29 C.F.R. § 29.5. These regulations also set forth guidelines for the recognition of a State Apprenticeship Agency or Council ("SAC") such as CAC. See 29 C.F.R. § 29.12. Prior to obtaining approval from the Secretary of Labor, an SAC must comply with a number of requirements including providing a "description of policies and operating procedures **which depart from or impose requirements in addition to** those prescribed in this part." 29 C.F.R. § 29.12(a)(5) (emphasis added).

The reason for this regulation is obvious: If the SAC is changing the basis upon which it was given Federal authority, it must first obtain Federal approval. Here, it is undisputed that neither CDIR nor CAC sought prior approval from OATELS for the needs test created by the amendments to California Labor Code section 3075. This failure is in contradiction of 29 C.F.R. § 29.12(a)(5). Moreover, even after being warned several times by OATELS, the state refused to obtain approval.

A SAC may be derecognized for "failure to fulfill, or operate in conformity with, the requirements of this part." 29 C.F.R. § 29.13. For California to take the position that a SAC can unilaterally change the basis upon which it received Federal approval is certainly not in conformity with this regulation.

V.
THE DISCRIMINATION BY THE STATE OF CALIFORNIA AGAINST NON-UNION
PROGRAMS JUSTIFIES DERECOGNITION

Until approximately 1993, California utilized a prior "needs" test to impede and preclude the approval of many non-union apprenticeship programs. After this earlier needs test was found to be illegal by the California Supreme Court as a violation of the Fitzgerald Act, various non-union apprenticeship programs were approved. Then, with the election of Gray Davis and a new regime in California, non-union programs again faced major stumbling blocks. New "needs" legislation was enacted, new union affiliated appointments were made to the CAC, and the discriminatory delay tactics began.

A classic example of the delay tactics involved the San Diego ABC Apprenticeship Program's long delay in obtaining approval of its low voltage EST apprenticeship program, even though the local IBEW Program received prompt approval for virtually an identical program.

On October 21, 2002, San Diego ABC's program submitted its Standards to the DAS. ABC was advised that as of November 1, 2002, the program was officially listed on the DAS "received" log book. There it sat despite numerous letters, telephone calls and emails. DAS did not even review the program submittal until July of 2003. Over twelve months later, on November 6, 2003, ABC finally received its approval (Judicial Notice is hereby requested of Exhibits 2 and 3 attached hereto from DAS' records). This occurred only after derecognition proceedings had been filed by OATELS.

In contrast, on February 28, 2001, the IBEW submitted its application to the DAS for a low voltage Sound Technician program which was **virtually identical** to the aforementioned ABC program. **Less than two months later**, on April 11, 2001, the chief of the DAS approved the program! This was inexplicable, inexcusable and a classic example of discrimination. Why did it take less than two months to approve the union's low voltage program and over six times longer to approve the non-union program? (Judicial Notice is hereby requested of Exhibit 4 attached hereto from DAS' files).

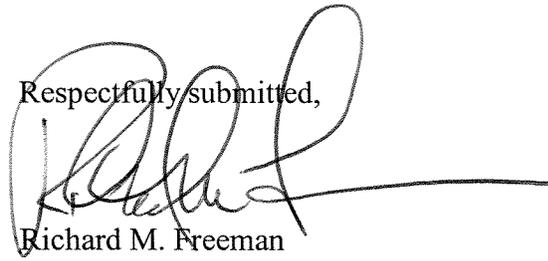
VI. CONCLUSION

California has obstinately taken the position that it can enact and implement a State statute, the "needs test," as a condition for program approvals. This is a "test" designed to limit the approvals of new programs if they might compete with existing union programs which the SBCTC proudly asserts have monopolies. A discriminatory system could not be more blatant.

The discriminatory needs test and the substantial delays by California in approving new programs are vehicles to inhibit apprenticeship program growth, not expand it. Moreover, elimination of competition encourages inefficiency in the existing programs, it does not improve it. If union programs have no competition, they have no incentive to improve.

Finally, a state as recalcitrant as California, in light of OATELS warnings and Federal case law directly on point, can simply not be allowed to operate as a renegade. The only solution, brought on by California's refusal to abide by Federal law, is derecognition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Freeman', with a long horizontal line extending to the right.

Richard M. Freeman

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

EXHIBIT 1

ALTSHULER, BERZON, NUSSBAUM, RUBIN & DEMAIN

ATTORNEYS AT LAW
177 POST STREET, SUITE 300
SAN FRANCISCO, CALIFORNIA 94108

1 SCOTT A. KRONLAND (#171693)
2 EILEEN B. GOLDSMITH (#218029)
3 ALTSHULER, BERZON, NUSSBAUM,
4 RUBIN & DEMAIN
5 177 Post Street, Suite 300
6 San Francisco, CA 94108
7 Telephone: (415) 421-7151

8 Attorneys for Proposed *Amicus Curiae*
9 State Building and Construction Trades
10 Council of California, AFL-CIO

11 IN PROCEEDINGS BEFORE THE
12 UNITED STATES DEPARTMENT OF LABOR

13	<i>In the Matter of:</i>	)	No. 2002-CCP-1
14)	
15	DEPARTMENT OF LABOR, OFFICE OF	)	DECLARATION OF ROBERT L.
16	APPRENTICESHIP TRAINING,	)	BALGENORTH IN SUPPORT OF
17	EMPLOYER AND LABOR SERVICES,	)	STATE BUILDING AND
18		)	CONSTRUCTION TRADES
19	Prosecuting Party,	)	COUNCIL'S REQUEST TO
20		)	PARTICIPATE AS <i>AMICUS CURIAE</i>
21	v.)	
22		)	(29 C.F.R. § 18.12)
23	CALIFORNIA DEPARTMENT OF)	
24	INDUSTRIAL RELATIONS,)	
25		)	Administrative Law Judge
26	Respondent.	)	The Honorable John Vitter
27)	
28	CALIFORNIA APPRENTICESHIP)	
29	COORDINATORS ASSOCIATION,)	
30)	
31	<i>Amicus Curiae</i> or Intervenor.)	

2002 APR 29 P 12:07
US DEPT OF LABOR
ADMIN LAW JUDGES

32 I, Robert L. Balgenorth, do hereby declare:

33 1. I am President of the State Building and Construction Trades Council of
34 California, AFL-CIO ("SBCTC").



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2. SBCTC is a federation of labor organizations composed of about 200 local unions and 20 district councils, which together represent about 375,000 construction workers in California, including journeypersons and apprentices.

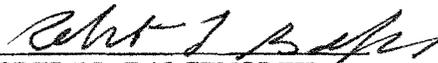
3. SBCTC was founded in 1901, and its primary mission is to represent the interests of its affiliates and their members, and to improve the health, jobs, safety and economic conditions of all working men, women and minors in the construction industry.

4. The vast majority of the apprentices registered in state-approved apprenticeship programs in California are union members represented by the SBCTC and its affiliates. These apprentices are enrolled in programs jointly sponsored by building trades unions and union-signatory contractors.

5. There are approximately 62,500 apprentices registered in state-approved apprenticeship programs in the building and construction trades in California. Of those 62,500 apprentices, approximately 57,000 are registered in joint apprenticeship programs set up pursuant to collective bargaining agreements between building trades unions and union contractors. Apprentices represented by building trades unions thus make up about 90 percent of the individuals who would be affected by the derecognition of the California Department of Industrial Relations ("DIR") by the Office of Apprenticeship Training, Employer and Labor Services ("OATELS").

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed in Sacramento, California, on this 26th day of August, 2002.


ROBERT L. BALGENORTH

F:\M1000\DIR Derecognition\Fleadings\Dir\fs\Balgenorth Declaration.wpd

EXHIBIT 2

NOV 06 2003

STATE OF CALIFORNIA

GRAY DAVIS, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF APPRENTICESHIP STANDARDS
455 GOLDEN GATE AVENUE, 8TH FLOOR
SAN FRANCISCO, CA 94102
(415) 703-4920
FAX: (415) 703-5477

www.dir.ca.gov

ADDRESS REPLY TO:
Div. of Apprenticeship Standards
P. O. Box 420603
San Francisco, CA 94142-0603



Date: October 31, 2003
DAS File No.: 05041
District No.: 16

Associated Builders and Contractors of San Diego, Inc.
Electronic Systems Technician (Sound Technician) UATC
4499 Ruffin Road, Suite 300
San Diego, CA 92123

Attention: Sherry Yarbrough
Senior Training Director

Dear Ms. Yarbrough,

I have reviewed the enclosed Apprenticeship Program Standards for the occupation of Electronic Systems Technician (Sound Technician) and found your Standards to be in compliance with applicable federal and state law and meet all the requirements of the California Code of Regulations (C.C.R.) Article 4, Section 212. "Content of Program Standards."

Pursuant to C.C.R. Section 212.2 "Eligibility and Procedure for DAS Approval of an Apprenticeship Program, your program is hereby granted approval to operate in accordance with your Apprenticeship Program Standards, which I have signed and enclosed. Congratulations!

Sincerely,

Henry P. ...
Chief, DAS

Cc: Minnie Poindexter -- Senior Consultant
Joseph Sais
File

Post-It® Fax Note

To	7671	Date	
Co./Dept.	ICK FIDELITY	From	
Phone #		Co.	
Fax #		Phone #	
		Fax #	
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EXHIBIT 3

State of California — Department of Industrial Relations
 DIVISION OF APPRENTICESHIP STANDARDS

DAS File No.:	05041
District No.:	16
	JAC Standards
X	Unilateral
	VA

EXTRACT OF NEW STANDARDS

1. Name of Committee
 Associated Builders and Contractors of San Diego, Inc.
 Electronic Systems Technician (Sound Technician) Unilateral Apprenticeship and Training Committee

2. Area Covered by Standards
 San Diego and Imperial Counties

3. Committee Address — Street Address, City & Zip Code
 4499 Ruffin Road, Suite 300, San Diego CA 92123
 Telephone No.
 619-492-9300

4. Occupation(s)
 Electronic Systems Technician (Sound Technician)
 DOT Number(s)
 829.281.022

5. Related Instruction
 180 Hours Per year
 6. School
 San Diego Community College District - San Diego City College

7. Present Journeyman Wage
 \$ Per
 8. Effective Date of Journeyman Wage
 October 4, 2002

9. Apprentice or Trainee Wage Scale (Indicate amount of time [hours, weeks or months] and percent of journeyman wage or dollar amount.)

1st Per.	See attachments A and B for all periods	5th Per.	9th Per.
2nd Per.		6th Per.	10th Per.
3rd Per.		7th Per.	11th Per.
4th Per.		8th Per.	12th Per.

10. Overtime Provisions
 No employee shall be employed more than forty hours in any work week unless the employee receives one and one-half times such employee's regular rate of pay for all hours*

Straight Time Hours Per Day: 8		Per Week: 40	
12. Other Compensation			
	Eff. Date	Hr/Mo	Eff. Date
A. Health & Welfare	\$ 2.20	hr.	\$
B. Pension	\$		\$
C. Vacation	\$		\$
D. Apprentices Funds	\$ 0.60	hr.	\$
E. Other (Specify)	\$ varies**		\$
Total	\$		\$

13. Work Processes
 Approx. Hours
 See article XVII, Work Training on pages 5, 6 and 7 of the Standards. 6000

14. Remarks
 * 10. (cont.) worked over forty in the workweek or over eight in an eight hour work day. So that overtime shall not interfere with schooling, overtime will not be permitted when related instruction classes are scheduled.

** 12. E.: A minimum of \$0.60 for training should be paid to ABC Training Trust. \$2.20 for health and welfare will be paid to ABC Health & Welfare Trust. The remainder of the dollar cost amount for fringe or portions thereof, shall be paid either as wages in lieu of benefits, or shall be irrevocably paid to third-party providers for benefits, including but not limited to health & welfare, pension, vacation, holiday or training. The payments for each period: 1st. \$0.86, 2nd. \$0.97, 3rd. \$1.07, 4th. \$1.17, 5th. \$1.38, 6th. \$1.48, 7th. \$1.68, 8th. \$1.79
 PROGRAM SPONSOR: A.B.C. OF SAN DIEGO, INC.

Ratio: A qualified employer may employ one apprentice when at least one journeyman is regularly employed and one additional apprentice for each one additional journeyman.

CERTIFIED AS CORRECT

George W. Hawkins
 George Hawkins
 Executive Vice President

Apprenticeship Consultant <i>[Signature]</i>	Date 10-28-02	Das Headquarters Use Date Processed
Committee Secretary or Chair (Cross out one) <i>[Signature]</i>	Date 10-24-02	

EXHIBIT 4

DAS File No.: 08912	
District No.: 16	
X	JAC Standards
	Unilateral
X	VA

REVISION OF APPROVED STANDARDS

1. Name of Committee
San Diego Sound Technician Joint Apprenticeship and Training Committee

2. Area Covered by Standards
San Diego and Imperial Counties

3. Committee Address -- Street Address, City & Zip Code
4675-D Viewridge Avenue, San Diego, CA 92123
Telephone No. (619) 569-6322, Ext. 1

4. Occupation(s)
Sound Technician
DOT Number(s) 829.281.022

A C T I O N	<input type="checkbox"/>	Revision of Journeyman Wages	<input type="checkbox"/>	Revision of Area	<input type="checkbox"/>	Revision of Other Compensation
	<input checked="" type="checkbox"/>	Revision of Apprentice or Trainee Rates	<input type="checkbox"/>	Revision of Ratio	<input type="checkbox"/>	Revision of Selection Procedures
	<input type="checkbox"/>	Revision of Work Processes	Effective Date of This Action: January 1, 2001			
	<input type="checkbox"/>	Other Revision of Addition:				

6. Related Instruction
160 Hours Per year

7. School
Palomar College

8. Present journeyman Wage
\$ 19.25 Per hour

9. Effective Date of Journeyman Wage
July 1, 2000

10. Apprentice or Trainee Wage Scale (Indicate amount of time [hours, weeks or months] and percent of journeyman wage or dollar amount.)

1st Per.	6 months/800 hrs. 45% \$8.70 hr.	5th Per.	6 months/800 hrs. 70% \$13.48 hr.	9th Per.	
2nd Per.	6 months/800 hrs. 50% \$9.63 hr.	6th Per.	6 months/800 hrs. 75% \$14.44 hr.	10th Per.	
3rd Per.	6 months/800 hrs. 55% \$10.59 hr.	7th Per.	6 months/800 hrs. 85% \$16.36 hr.	11th Per.	
4th Per.	6 months/800 hrs. 60% \$11.55 hr.	8th Per.	6 months/800 hrs. 90% \$17.33 hr.	12th Per.	

11. Overtime Provisions See attachment

12. Straight Time Hours
Per Day: 8 Per Week: 40

13. Other Compensation	Eff. Date	Hr/Mo	Eff. Date	Hr/Mo
A. Health & Welfare	\$ 2.47	hr.	\$	
B. Pension	\$ *		\$	
C. Vacation	\$ --		\$	
D. Apprentice Funds	\$ 0.27	hr.	\$	
E. Other (Specify)	\$		\$	
Total	\$		\$	

14. Work Processes See Attachment
Approx. Hrs 6.4

RECEIVED
FEB 28 2001
DAS HDQ.

15. Remarks
The primary purpose of this Revision is to insure the apprentice wage rates meet the minimum Poverty Wage Guide Lines for Apprentices Employed on Private Work Projects effective on January 1, 2001. The only period requiring an increase in base wage rate is first period and that change is made. Based on subsequent comprehensive labor/management negotiations during the year 2001 there may be another revision submitted to include changes to other periods that may occur.

13. Other Compensation
B. * varies - see attached breakout sheet

CERTIFIED AS CORRECT:

Signature -- Apprenticeship Consultant <i>Joseph Pais</i>	Date 2-16-01	Signature -- Committee Sec. or Chair (Cross out one) <i>[Signature]</i>	Date 2/13/01
--	-----------------	--	-----------------

These Revisions are hereby made part of and supersede provisions of standards previously approved.

Approved -- Chief, Division of Apprenticeship Standards <i>Henry T. [Signature]</i>	Date Approved 4/11/01
--	--------------------------

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of San Diego; I am over the age of eighteen years and not a party to the within entitled action; my business address is 12544 High Bluff Drive, Suite 300, San Diego, California 92130-3051.

On **September 20, 2004**, I served the following document(s) described as

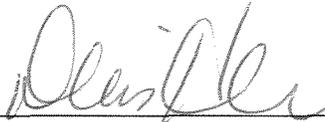
AMICUS BRIEF IN SUPPORT OF OATELS' MOTION FOR SUMMARY JUDGMENT

on the interested party(ies) in this action by placing true copies thereof enclosed in sealed envelopes and/or packages addressed as follows:

SEE ATTACHED SERVICE LIST

- BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at San Diego, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY OVERNIGHT DELIVERY:** I served such envelope or package to be delivered on the same day to an authorized courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier.
- BY FACSIMILE:** I served said document(s) to be transmitted by facsimile pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was 858-509-3691. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The sending facsimile machine (or the machine used to forward the facsimile) issued a transmission report confirming that the transmission was complete and without error. Pursuant to Rule 2008(e), a copy of that report is attached to this declaration.
- BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the office of the addressee(s).
- STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- FEDERAL:** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on **September 20, 2004**, at San Diego, California.



Doris Herrera

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